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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

B.I.P. CORPORATION, Plaintiff, vs. MITEC TELECOM, INC., AND DOES 1 TO 30, Defendant.	Case No. 08 CV 0313 H (CAB) **DEFENDANT MITEC TELECOM, INC.'S NOTICE OF MOTION AND MOTION TO DISMISS UNDER RULE 12(b)(6), AND IN THE ALTERNATIVE FOR SUMMARY JUDGMENT UNDER RULE 56** Date: October 20, 2008 Time: 10:30 a.m. Place: Courtroom 13 Complaint Filed: January 18, 2008 Trial Date: None Set

TO PLAINTIFF AND TO ITS ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on October 20, 2008, at 10:30 a.m., or as soon thereafter as counsel may be heard, in Courtroom 13 of the above-entitled Court, located at 940 Front Street, San Diego, California 92101, Defendant Mitec Telecom, Inc. ("Mitec") will and hereby does move this Court for an order, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, dismissing the Second Amended

Complaint of Plaintiff BIP Corporation on the grounds that the present action is preempted pursuant to the doctrine of res judicata due to the Judgment entered in favor of Mitec in *Mitec Telecom, Inc. v. BIP Corporation and Export Development Canada*, Quebec Superior Court, District of Montreal Case No. 500-17-040674-080, on April 18, 2008.

PLEASE TAKE ADDITIONAL NOTICE that, in the alternative, Mitec will and hereby does move this Court for summary judgment on the ground that there is no genuine issue of material fact, and that Mitec is entitled to judgment as a matter of law, because the present action is preempted pursuant to the doctrine of res judicata due to the Judgment entered in favor of Mitec in *Mitec Telecom, Inc. v. BIP Corporation and Export Development Canada*, Quebec Superior Court, District of Montreal Case No. 500-17-040674-080, on April 18, 2008.

This Motion is based upon this Notice of Motion and Motion, the accompanying Memorandum of Points and Authorities, the accompanying Request for Judicial Notice and Declaration of David R. Sugden, the accompanying Declaration of Bruno Dumais, all pleadings and papers on file in this action, and upon such other matters as may be presented to the Court at the time of the hearing.

Dated: September 5, 2008

CALL, JENSEN & FERRELL
A Professional Corporation
SCOTT J. FERRELL
DAVID R. SUGDEN

By: */s/ David R. Sugden*
DAVID R. SUGDEN

Attorneys for Defendant Mitec Telecom, Inc.